

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MARCUS TENNYSON,	:	
	:	No. 1:10-cv-160
Plaintiff,	:	
	:	
VS.	:	OPINION AND ORDER
	:	
COMMISSIONER OF SOCIAL	:	
SECURITY,	:	
	:	
Defendant.	:	
	:	

This matter is before the Court on the Magistrate Judge's March 4, 2011 Report and Recommendation (doc. 17), to which no objections were filed. In her report, the Magistrate Judge recommends that the Administrative Law Judge's finding of non-disability be vacated and the matter remanded. For the reasons indicated herein, the Court AFFIRMS the Magistrate Judge's Recommended Decision, ADOPTS the Magistrate Judge's Report and Recommendation and REMANDS this case for further consideration.

Plaintiff applied for child's insurance benefits ("CIB") and supplemental security income ("SSI") claiming disability as of March 1, 2006, and his application was denied both initially and on reconsideration (doc. 17). Plaintiff requested a hearing before an Administrative Law Judge ("ALJ") and on December 29, 2008, the ALJ denied Plaintiff's applications for CIB and SSI (Id.). The ALJ found that Plaintiff had a severe combination of impairments, including paranoid schizophrenia, affective disorder and attention deficit hyperactivity disorder; however the ALJ concluded that

Plaintiff was not disabled within the meaning of the Social Security Act and denied his applications (Id.).

The Magistrate Judge determined that the ALJ's findings were not supported by substantial evidence (Id., citing, inter alia, Richardson v. Perales, 402 U.S. 389, 401 (1971)). Specifically, the Magistrate Judge found, inter alia, that the ALJ's determination that Plaintiff's impairments did not constitute disability under the Act was not supported by substantial evidence because the ALJ failed to consider Plaintiff's treating psychiatrist's opinion regarding disability, and the ALJ erred by not considering the factors to be reviewed when determining the weight to give a treating physician (Id.).

Similarly, the Magistrate Judge found that the ALJ's determination that Plaintiff's testimony regarding the intensity, persistence and limiting effects of his symptoms was not credible was unsupported by substantial evidence (Id.). Specifically, the Magistrate Judge found that the ALJ had failed to clearly state his reasons for that determination (Id.).

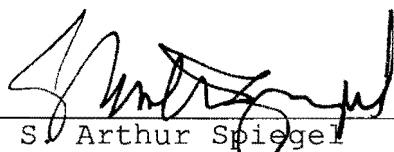
Having found that the decision of the ALJ was not supported by substantial evidence in the record, the Magistrate Judge recommends that the case be remanded for further proceedings pursuant to sentence four of 42 U.S.C. § 405(g) because of the ALJ's failure to properly weigh the opinion of Plaintiff's treating psychiatrist and because of errors in the ALJ's credibility

determination (Id.). The Magistrate Judge recommends that on remand the Commissioner and the ALJ should (1) reevaluate the medical source opinions and Plaintiff's credibility under the legal criteria set forth in the regulations, rulings and as required by case law and (2) determine anew whether Plaintiff is under a disability within the meaning of the Social Security Act (Id.).

No objections to the report and recommendation of the Magistrate Judge were filed, and the Court finds no clear error in the record. See Advisory Committee Notes to Fed. R. Civ. P. 72; Thomas v. Arn, 474 U.S. 140, 150 (1985) ("It does not appear that Congress intended to require district court review of a magistrate judge's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings"). On the contrary, the Court finds the Magistrate Judge's Report and Recommendation extremely well-reasoned, thorough, and correct. Accordingly, the Court ADOPTS and AFFIRMS the Magistrate Judge's Report and Recommendation (doc. 17), VACATES the decision of the ALJ that Plaintiff be denied CIB and SSI benefits, REMANDS this matter to the ALJ for proceedings consistent with this opinion, and DISMISSES this case from the Court's docket.

SO ORDERED.

Dated: 3/23/11



S. Arthur Spiegel
United States Senior District Judge